Filed 1/7/09 Burk v. City of Arcadia CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

RICHARD M. BURK, Plaintiff and Appellant, v. CITY OF ARCADIA, Defendant and Respondent.	B205040 (Los Angeles County Super. Ct. No. GC039580)

APPEAL from a judgment of the Superior Court of Los Angeles County, Jan A. Pluim, Judge. Affirmed.

Haney, Buchanan & Patterson, Steven H. Haney and Michelle S. Tamkin for Plaintiff and Appellant.

Law Offices of Carpenter, Rothans & Dumont, Steven J. Rothans and David G. Torres-Siegrist for Defendant and Respondent.

Richard M. Burk contends that the trial court erred in granting respondent Arcadia Police Department's[1] anti-SLAPP (Strategic Lawsuit Against Public Participation) motion striking the second and fourth causes of action of his complaint. These causes of action alleged that representatives of the Department slandered Burk and damaged his career as a firefighter for Los Angeles County. The Department contends that the statements at issue were protected speech and the trial court ruled properly. We find no error and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant is a firefighter with Los Angeles County. He filed a complaint on September 11, 2007 alleging six causes of action: the first alleged false arrest; the second, slander; the third, libel; the fourth, intentional interference with contractual relations; the fifth, intentional interference with prospective business advantage; the sixth, intentional infliction of emotional distress, and the seventh alleged negligence. Burk's complaint concerned issues arising from his arrest and booking on April 4, 2007.

Burk alleges in his complaint that he was attending a friend's birthday party at the Derby restaurant in Arcadia. During the dinner two of the guests got into an argument that resulted in a dinner table accidentally being knocked over. The table was righted and the dinner party calmly resumed. Police were apparently called to the scene. Burk alleges that the police "swarmed" the restaurant "as if responding to a call reporting a mass riot in progress. . . . The level of urgency in the officer's conduct was completely unnecessary given the fact that the verbal dispute had been over for a significant period of time and there was no disturbance in progress, but instead, only a normal restaurant scene with customers enjoying their dinners." He further alleges that the police were yelling and refused to listen to the restaurant patrons' protests that there was no need for the police to be there or to behave as they were. The police arrested two of Burk's dinner

[1] Hereafter referred to as the Department.

companions for "drunk in public." Burk alleges that he attempted to calm the situation by telling the police that he was a Los Angeles County firefighter. He claims that the officers responded that he should sit down and shut up or he was going to jail too. Later, another officer asked where he worked. Burk replied he worked in San Dimas. The officer then replied that he had called the Sheriff's office in San Dimas and found out that he did not work there. Burk then attempted to show the officer his identification as a firefighter, but the officer would not hear any of it. Instead, the officer arrested him for impersonating a police officer and being drunk in public. Burk alleges that he was not drunk and that he never told the police he was a deputy sheriff. He was transported to the police station and put in the drunk tank where he remained for five hours until his release. No charges were filed.

Burk further alleges that the police called his employer at the San Dimas fire station and told the duty officer that he was drunk in public, had been in a fight and had lied about being a deputy sheriff. He further alleges that the police then caused a newspaper article to run in the local Arcadia paper falsely characterizing the circumstances at the restaurant as a brawl that was broken up by the police. The "article" in a section of the paper entitled "Arcadia Police Blotters" read: "Units were called to The Derby restaurant around 7:40 [p.m.] regarding a group fighting in the patio area. Tables were overturned and bottles and glasses were thrown about. Officers broke up the fight and asked everyone to leave the location; however, three inebriated individuals were belligerent, loud, and uncooperative. A (*sic*) 26 and 41-year-old male Caucasians and a 26-year-old female Caucasian were arrested for disorderly conduct/drunk in public."

Burk also alleges that, based upon the phone call from the Arcadia police, he was disciplined by his employer by means of a letter of reprimand that stated that he had been found to have violated the Los Angeles County Fire Department's standards of behavior. Burk alleges that he had been employed by the fire department for 16 years and has had an exemplary career. He further contends that this discipline, precipitated by the call to his department by the Arcadia police at the time of his arrest, will negatively affect the rest of his career with the fire department.

Respondent Department filed a demurrer and motion to strike, both of which were heard on January 3, 2008. Demurrer was sustained as to the first, sixth and seventh causes of action with leave to amend within ten days. Demurrer was overruled as to the third cause of action.[2] Those rulings are not challenged. The court granted the Department's special motion to strike the second, third and fourth causes of action. Burk appeals the ruling as to the second (slander) and fourth (intentional interference with contractual relations) causes of action only.

The Department based its demurrer and special motion to strike upon its contention that its actions in contacting appellant's employer and causing the newspaper article to be printed were protected speech. In support of this contention the Department attached the declaration of Lt. Larry Goodman to its special motion to strike. Goodman's declaration stated, in part: "4. On April 4, 2007, I was an on-duty Sergeant at the Arcadia P.D. Jail when plaintiff RICHARD BURK was being booked and processed into the jail facility. [¶] 5. As a result of plaintiff's representations out in the field that he was a Sheriff's Deputy, the Los Angeles County Sheriff's Department was notified regarding plaintiff's arrest. L.A.S.D. personnel [] responded to the Arcadia P.D. Jail. However, it was determined that plaintiff was not a deputy but that he was instead a firefighter with the County of Los Angeles. [¶] 6. While plaintiff was being processed into the Arcadia P.D. jail facility I requested the telephone number to his work, and asked for the name of the on-duty Captain. Plaintiff BURK voluntarily provided the requested information. At no point did plaintiff specifically request that I not contact his employer. [¶] 7. Based on the public safety aspect of plaintiff's profession, plaintiff falsely identifying himself as a peace officer, the high standards expected of such personnel and the likelihood that plaintiff's arrest would initiate an administrative process with his employer, I telephoned the L.A. County Fire Department, and spoke with Captain Dochterman of the Los Angeles County Fire Department, San Dimas, Station No. 64. I

[2] The third cause of action alleging libel was based upon the publication of the story in the local Arcadia newspaper, *supra*.

advised the Captain of plaintiff's arrest and inquired as to whether the L.A.C.F.D. wanted to send a supervisor to administratively speak with plaintiff at the jail."

Burk offered his declaration, repeating the allegations in his complaint, in opposition to the special motion to strike. Although Burk also lodged written objections to the declaration of Lt. Goodman, the objections were not pursued by Burk at the hearing nor were they ruled upon either then or in the trial court's written ruling on the motion. By failing to obtain a ruling on its objections in an anti-SLAPP motion, those objections are deemed waived. (*Gallant v. City of Carson* (2005) 128 Cal.App.4th 705, 713.) As we observed in *Gallant*: "[T]he obligation to request a ruling does not impose an undue burden on counsel. He or she need only be diligent, for example, by making an oral request for a ruling. [Citations.] '[I]f evidentiary objections have previously been filed in writing, it is [counsel's] job (tactfully) to *remind the court* at the hearing of the necessity to rule on [the objections].' (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2004) ¶ 10:210.3, p. 10-75.) In this way, the objections are preserved for appeal." (*Ibid.*; see also *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291, fn. 17.)

The trial court ruled that the city had met its initial burden of demonstrating that the second through fifth causes of action arose from protected speech, but had not met its burden as to the sixth and seventh causes of action. The trial court further ruled that the plaintiff had failed to meet the shifted burden of establishing probability of prevailing on the merits of the second, fourth and fifth causes of action, since the speech involved therein was protected pursuant to Code of Civil Procedure section 425.16, subdivision (e)(1) and (2) and Civil Code section 47, subdivision (c).[3] The court went on to state in its written ruling: "The City is immune from any liability for statements made to the plaintiff's employer as such statements were made in connection with an official

---

[3] As Burk observes in his opening brief, reference to Civil Code section 47, subdivision (c) was likely a typographical error, and the trial court meant Civil Code section 47, subdivision (b).

proceeding authorized by law. . . . The phone call by the Arcadia Police Department was made to the L.A. County Fire Department due to the public safety aspect of plaintiff's profession and the likelihood that the charges would initiate an administrative process which, in fact, it did. . . . The [official] process also resulted in an official letter of reprimand." The trial court relied upon paragraphs six and seven of Goodman's declaration, *supra*, as evidentiary support for its ruling.

DISCUSSION

The anti-SLAPP law is found in Code of Civil Procedure section 425.16,[4] which provides in part:

"(a) The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.

"(b)(1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

"(2) In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based. [¶] . . . [¶]

"(e) As used in this section, 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public

[4] Hereafter referred to as section 425.16.

issue' includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest."

Resolution of an anti-SLAPP motion involves a two-step process. "First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. The moving defendant's burden is to demonstrate that the act or acts of which the plaintiff complains were taken 'in furtherance of the [defendant]'s right of petition or free speech under the United States or California Constitution in connection with a public issue,' as defined in the statute. (§ 425.16, subd. (b)(1).) If the court finds such a showing has been made, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim. Under section 425.16, subdivision (b)(2), the trial court in making these determinations considers 'the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.'" (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) "In short, the statutory phrase 'cause of action . . . arising from' means simply that the defendant's act underlying the plaintiff's cause of action must *itself* have been an act in furtherance of the right of petition or free speech. [Citation.]" (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78.) "The anti-SLAPP statute's definitional focus is not the form of the plaintiff's cause of action but, rather, the defendant's *activity* that gives rise to his or her asserted liability — and whether that activity constitutes protected speech or petitioning." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 92.) The gravamen of the claim determines whether section 425.16 applies. (*Mann v. Quality Old Time Service, Inc.* (2004) 120 Cal.App.4th 90, 102-103.)

Our review of the trial court ruling is *de novo*. "We consider 'the pleadings, and supporting and opposing affidavits . . . upon which the liability or defense is based.' (§ 425.16, subd. (b)(2).) However, we neither 'weigh credibility [nor] compare the weight of the evidence. Rather, [we] accept as true the evidence favorable to the plaintiff [citation] and evaluate the defendant's evidence only to determine if it has defeated that submitted by the plaintiff as a matter of law.' (*HMS Capital, Inc. v. Lawyers Title Co.* (2004) 118 Cal.App.4th 204, 212.)" (*Soukup v. Law Offices of Herbert Hafif*, *supra*, 39 Cal.4th at p. 269, fn.3.)

Appellant's second cause of action for slander alleged that the Department "deliberately telephoned Burk's employer at the LACFD in San Dimas and falsely told the duty officer . . . that Burk was drunk in public, had lied about his employment by saying he was a sheriff, and had been part of a 'fight,' as well as other false statements that damaged Burk's reputation with his employer." Appellant further alleged that the statements were false and defamatory per se, and that they were known to be false when uttered and were motivated by ill will toward him with the intent to vex, annoy or injure him.

Appellant's fourth cause of action for intentional interference with contractual relations alleged that the Department "intended to interfere with the contractual relationship between Burk and the LACFD by making false statements to the LACFD about Burk via telephone and by having a newspaper article published containing false statements about Burk, which caused harm to his unblemished reputation as a long-term firefighter with the LACFD and made him appear to have questionable judgment."

1. *The Department Met Its Burden of Demonstrating that the Speech Herein Was Protected.*

Appellant contends that the Department did not meet its initial burden of demonstrating protected speech. We conclude otherwise. The gravamen of the claims in the second and fourth causes of action fall within the purview of section 425.16.

Preliminarily, it is clear that the Department constitutes a "person" entitling it to the protection provided by the anti-SLAPP statute. "Given [] the compelling interest in

the promotion of freedom of speech, the word 'person' as used in section 425.16, subdivision (b) must be read to include a governmental entity." (*Bradbury v. Superior Court* (1996) 49 Cal.App.4th 1108, 1114.)

Appellant disputes the facts of his arrest and those underlying his discipline, as well as the motivation for the call to his employer. He contends that he was falsely arrested and that the Department deliberately called his employer and related false and defamatory information solely for the purpose of harassment. He further argues that the Department has not refuted these contentions by offering declarations of the police officers at the scene of his arrest who had first-hand knowledge of the circumstances. Appellant misses the point. In order to meet its burden of demonstrating that its actions were protected pursuant to section 425.16, the focus is not on appellant's assertions of factual falsity but rather on what the Department actually did.

In support of its anti-SLAPP motion the department submitted the declaration of Lt. Goodman.[5] Goodman sets forth the reason for the communications with appellant's employer: "Based on the public safety aspect of plaintiff's profession, plaintiff falsely identifying himself as a peace officer, the high standard expected of such personnel and the likelihood that plaintiff's arrest would initiate an administrative process with his employer, I telephoned the L.A. County Fire Department, and spoke with Captain Dochterman of the Los Angeles County Fire Department, San Dimas, Station No. 64. I advised the Captain of plaintiff's arrest and inquired as to whether the L.A.C.F.D. wanted to send a supervisor to administratively speak with plaintiff at the jail." It is undisputed

---

[5] The declaration is admissible evidence since, as discussed *supra*, Burk waived objection by failing to obtain rulings in the trial court. Burk's objections also missed the mark. He objected to paragraph 7 of Goodman's declaration, arguing that Goodman lacked first hand knowledge of what happened in the field when Burk was arrested. The facts addressed in paragraph 7, however, *were* within Goodman's knowledge, i.e., Goodman stated he called Burk's employer to report the circumstances of Burk's arrest. Burk's assertion that the facts related by Goodman were maliciously false is irrelevant to the determination whether Goodman's conduct in making the call was protected under the anti-SLAPP statute.

that the County Fire Department thereafter initiated and completed a procedure resulting in administrative discipline by means of the letter lodged in appellant's personnel file.

Section 425.16, subdivision (e) defines an "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" to include (1) any oral statement made before an executive proceeding, or any other official proceeding authorized by law and (2) any oral statement made in connection with an issue under consideration or review by an executive body, or any other official proceeding authorized by law. It goes without saying that a public employee, especially a public safety employee, is subject to ongoing job performance evaluation, consideration and review by his employer. In this instance Burk's employer was the County of Los Angeles, an executive body. The conduct of the Department in contacting his employer and providing information about his off-duty behavior meets the definition of protected conduct, and the Department has met its burden of demonstrating that the communications with appellant's employer fall within the provisions of section 425.16. As stated in its anti-SLAPP moving papers, the Department asserted that the communications were made in contemplation of a potential personnel investigation regarding appellant's fitness to perform his job as a fireman. This assertion is supported by the County Fire Department's Letter of Reprimand which concluded that appellant had violated the fire department's Standards of Behavior, which provided: "When in an off-duty or non-Department capacity, employees shall not engage in conduct which impairs, or potentially impairs their performance of Department duties or brings discredit to the Department."

Relying upon *Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122, appellant argues that the conduct of the Department is not protected because its statements were defamatory. His argument is unpersuasive. *Weinberg* involved the defendant's defamatory statements describing the plaintiff's allegedly criminal conduct. These statements were not made to law enforcement in order to report a crime, nor were they made in litigation to right a wrong. Unlike the statements at issue here, the complained of statements in *Weinberg* did not fall within the definition of protected speech found in

section 425.16, subdivision (e)(1) and (2), and, further, as the *Weinberg* court concluded, did not meet the definition of protected speech relating to an issue of public interest found in section 425.16, subdivision (e)(3) and (4). The statements at issue in *Weinberg* were merely defendant's allegedly defamatory statements made to other private parties. Here, the Department made the statements to Burk's employer, a public agency. That agency, predictably, conducted an investigation into his fitness as a firefighter.

Although argued in the trial court, Burk presents no argument here relating to whether the article in the local newspaper is protected. It is unclear how the article came to be published. Burk alleges in his complaint that the Department "caused a newspaper article to run" but does not provide more specifics. In its argument in the trial court, the Department referred to Government Code section 6254, subdivision (f)(1) relating to public access to police blotters. That section provides in part: "Notwithstanding any other provision of this subdivision, state and local law enforcement agencies *shall* make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation: [¶] (1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds." (Emphasis added.) The information published in the newspaper appears to be no more than the Department's compliance with the provisions of Government Code section 6254, subdivision (f)(1) and is likewise protected pursuant to section 425.16.

In summary, the Department has met its prima facie showing that the conduct herein falls within that protected by section 425.16.

2. *Burk Has Failed To Establish A Probability He Will Prevail On His Claim.*

Relying upon his declaration and the allegations in his complaint, Burk contends that he has established a probability that he will prevail. He argues that the police fabricated the facts of his arrest and then telephoned his employer solely to harass him. The Department contends that Burk has failed to meet his burden because the Department's conduct that forms the basis of his second and fourth causes of action was absolutely protected by the litigation privilege of Civil Code section 47,[6] the immunity provided by the Government Code and the *Noerr-Pennington* doctrine.

Burk bears the burden of proof that there is a probability of prevailing. "In order to establish a probability of prevailing on the claim (§ 425.16, subd. (b)(1)), a plaintiff responding to an anti-SLAPP motion must '"state[] and substantiate[] a legally sufficient claim."' (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1123, quoting *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 412.) Put another way, the plaintiff 'must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.' (*Matson v. Dvorak* (1995) 40 Cal.App.4th 539, 548; accord, *Rosenaur v. Scherer* (2001) 88 Cal.App.4th 260, 274.) In deciding the question of potential merit, the trial court considers the pleadings and evidentiary submissions of both the plaintiff and the defendant (§ 425.16, subd. (b)(2)); though the court does not *weigh* the credibility or comparative probative strength of competing evidence, it should grant the motion if, as a matter of law, the defendant's evidence supporting the motion defeats the plaintiff's attempt to establish evidentiary support for the claim. (*Paul for Council v. Hanyecz* (2001) 85 Cal.App.4th 1356, 1365.)" (*Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821.) We conclude that the Department's conduct was privileged and,

---

[6] Hereafter, referred to as section 47.

therefore, Burk has failed to establish that his second and fourth causes of action are legally sufficient.

As discussed *supra*, the basis of Burk's claims at issue here is that Lt. Goodman telephoned his employer, the County Fire Department. The parties fail to note that the Letter of Reprimand, attached to Burk's complaint, does not mention the telephone call. The Letter of Reprimand relies solely upon the "narrative taken by Officer Michael Hale of the Arcadia Police Department." Although not part of the appellate record, we take this to be reference to the police report prepared after Burk's arrest. This would indicate that the Fire Department initiated some sort of investigation resulting in it obtaining and relying upon a copy of this report. Burk's employer concluded in the Letter: "As a Fire Fighter, you are expected to conduct yourself in a professional manner both on and off duty. Being arrested for being drunk in public and disorderly conduct is unbecoming behavior of a Department employee. Furthermore, impersonating a Sheriff's deputy, as indicated by the police narrative, in order to gain favor in this situation was dishonest. Moreover, it brings both discredit and embarrassment upon the Department. Your misrepresentations are contrary to the Department's Core Values as all Department employees are expected to be honest in their dealings with others. As such, you failed to meet Departmental expectations by not conducting yourself in a professional manner while off-duty and bringing discredit and embarrassment to the Department. Therefore, your actions are not acceptable, and in the future you are directed to follow policy and procedure to ensure that you are in compliance with the Standards of Behavior."

Although the parties have not directed us to a specific ordinance or statute governing his discipline, Burk does not argue that the procedure by which his discipline was imposed by his employer was not authorized by law. Since Burk bears the burden of proof, we conclude that his disciplinary proceeding was authorized by law.

A. Government Code Immunity

As discussed, when he called the County Fire Department and informed it of Burk's arrest, Lt. Goodman initiated an administrative proceeding, conducted by Burk's

employer, which ultimately resulted in the letter of reprimand being placed in his personnel file. Even if the facts Goodman recited were bogus and Goodman's call to the County Fire Department was done maliciously and in bad faith, the Department is immune from liability. Goodman was acting within the scope of his employment by telephoning the County Fire Department. Government Code section 821.6 provides: "A public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause," and Government Code section 815.2, subdivision (b) provides: "Except as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability."[7]

The immunity of Government Code section 821.6 "extends to other causes of action arising from conduct protected under the statute, including defamation and intentional infliction of emotional distress." (*Gillan v. City of San Marino* (2007) 147 Cal.App.4th 1033, 1048.) In *Gillan*, the police arrested the plaintiff, a high school basketball coach, for sexual assault, and issued a press release setting forth the victim's allegations and solicited responses from potential additional victims. The arrest was determined to be without probable cause. Gillan sued for false arrest, defamation and intentional infliction of emotional distress. As to the latter two causes of action, this Court's Division Three concluded that issuance of the press release was absolutely privileged pursuant to Government Code section 821.6. The court stated: "Regardless of whether those statements were reasonable and appropriate, on the one hand, or made maliciously as part of a baseless threatened prosecution, on the other hand, we conclude . . . that the individual defendants are immune from liability for defamation or intentional infliction of emotional distress based on those statements pursuant to Government Code section 821.6. The city also therefore is immune from liability on those counts arising

[7] Government Code section 821.6 does not provide immunity from liability for false arrest. (*Sullivan v. County of Los Angeles* (1974) 12 Cal.3d 710, 719-722.)

from the acts of the individual defendants. [Citing Gov. Code, § 815.2, subd. (b).]" (*Gillan*, *supra*, at p. 1050, fn. omitted.)

B. Section 47

Section 47 provides, in part: "A privileged publication or broadcast is one made: [¶] (a) In the proper discharge of an official duty. [¶] (b) In any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law . . . ."

Whether it communicated truthful or fabricated information, we conclude that Goodman's telephone call falls within the definition of a publication made in the course of a proceeding authorized by law and is absolutely privileged pursuant to section 47. "The policy underlying the privilege is to assure utmost freedom of communication . . . ." (*Imig v. Ferrar* (1977) 70 Cal.App.3d 48, 55.) In *Imig*, the court found that the privilege applied to false and defamatory complaints made to the plaintiff/police officer's employer. As noted in *Imig*, *supra,* at page 55, the privilege has likewise been held to apply to complaints to the state Real Estate Commissioner alleging misconduct by a broker (*King v. Borges* (1972) 28 Cal.App.3d 27) and to a letter written by a parent to a high school principal complaining about a school teacher (*Martin v. Kearney* (1975) 51 Cal.App.3d 309). Similarly, the litigation privilege has been held applicable to civil service disciplinary proceedings (*Kemmerer v. County of Fresno* (1988) 200 Cal.App.3d 1426, 1441). The fact that no proceeding was underway at the time of Goodman's call is irrelevant, since communications preliminary to the commencement of official action is also privileged. (*Dove Audio, Inc. v. Rosenfeld, Meyer & Sussman* (1996) 47 Cal.App.4th 777, 783.) Since the undisputed intent of Goodman's telephone call was to provide information to Burk's employer in order to commence a personnel investigation, we conclude that it was absolutely privileged. The privilege is applicable to both causes of action.

Because we find that the Department's conduct was absolutely privileged pursuant to Government Code section 821.6 and Civil Code section 47 we need not address the

argument that the conduct also falls within that protected under the *Noerr-Pennington*[8] doctrine.

CONCLUSION

The trial court correctly granted the motion to strike the second and fourth causes of action and its judgment is affirmed. Respondent is to have its costs and fees on appeal.

NOT TO BE PUBLISHED

WEISBERG, J.*

We concur:

MALLANO, P.J.

ROTHSCHILD, J.

---

[8] *Eastern R. Conf. v. Noerr Motors* (1961) 365 U.S. 127 [81 S.Ct. 523]; *Mine Workers v. Pennington* (1965) 381 U.S. 657 [85 S.Ct. 1585].

*Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.